Provided that no such assessment shall be made:
(a) if the repayment was in fact made on the basis of, or in accordance with, the practice of the Director General generally prevailing at the time when the repayment was made; or
(b) in respect of any tax, more than twelve years after the tax has been repaid.

(3) The Director General where it appears to him that:

(a) any form of fraud or wilful default has been committed by or on behalf of any person; or
(b) any person has been negligent,

in connection with or in relation to tax, may at any time make an assessment in respect of that person for any year of assessment for the purpose of making good any loss of tax attributable to the fraud, wilful default or negligence in question.

The above section, however, has to be read together with s 33 of the Limitation Ordinance 1953 which, inter alia, provides that limitation will not apply to any proceedings by the government for the recovery of tax.

In my interpretation the word 'may' in s 91 of the Income Tax Act denotes a permissive rather than restrictive authority to the Director General to impose taxes within 12 years and the period of 12 years was specified in order to bring it within the purview of the Limitation Ordinance 1953. Consequently s 91(1) of the Income Tax Act concomitantly read with s 33 of the Limitation Ordinance would enable the Revenue to recover taxes beyond the 12-year period. Reading these sections as a whole I am of the view that s 91(1) is permissive in nature and therefore not intended to be a limitation – the period of 12 years mentioned therein having been rendered irrelevant by the proviso to s 33 of the Limitation Ordinance.

This is the view taken by the Federal Court in the case of *Arumugam Pillai* v *Goverment of Malaysia*[1] in particular at p 73 where Gill CJ said:

> In our judgment limitation as such does not apply to any proceedings by the government for the recovery of any tax. This would seem clear from the proviso to s 33(1) of the Limitation Ordinance 1953. Reading s 91 of the Income Tax Act 1967 as a whole it would seem clear that, quite apart from any form of fraud, the words 'within twelve years after its expiration' are irrelevant where there has been any wilful default on the part of a taxpayer in disclosing part of his income for any particular year of assessment.

Even if my interpretation of the above is wrong and the 12-year period in s 91(1) is intended to be a limitation period, I would nevertheless hold that the Revenue action can go beyond this period if it could be established that fraud or wilful default has been committed by or on behalf of any person or that person has been negligent. Although para 7 of the statement of claim by the Revenue alleges that the plaintiff had neglected to pay the tax, the defendant had not refuted this allegation. The Director General is therefore authorized to make the assessment (which is defined in s 2 of the Act to include additional assessment) for the year dating back to 1968.

I therefore dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Tetuan Rashid Ali Co.*

Reported by *Ng Sheau Jiuan*

Public Prosecutor v Teo Kok Keng

HIGH COURT (SIBU) – CRIMINAL REVISION NO 1 OF 1988
CHONG SIEW FAI J
11 AUGUST 1988

Road Traffic – Driving offences under Road Traffic Ordinance 1958 – Conviction of – Road Transport Act 1987 already in force on date of commission of offences – Provisions in both statutes substantially the same in relation to offence charges – Whether errors in charge vitiated convictions – Whether amendments prejudicial to accused

Road Traffic – Offence of using motor vehicle without valid third-party insurance – Conviction of – Sentence of disqualification from driving for six months – Whether 'special reasons' were shown for exemption from statutory minimum of 12 months' disqualification – Whether trial court erred in sentencing – Road Transport Act 1987, s 90(2)

Criminal Procedure – Sentencing – Disqualification from driving for six months for offence of using motor vehicle without valid third-party insurance – Whether 'special reasons' were shown for exemption from statutory minimum of 12 months' disqualification – Whether trial court erred – Road Transport Act 1987, s 90(2)

Words and Phrases – 'Special reasons'

The accused was convicted of four offences under the Road Traffic Ordinance 1958. He was fined and disqualified from holding and obtaining a Group D driving licence for six months. All the offences were committed on 3 January 1988 by which date the Road Traffic Ordinance ('the 1958 Ordinance') had already been repealed and the Road Transport Act 1987 ('the 1987 Act') had come into force. As such, the accused should have been charged with the four offences under the 1987 Act.

The case came up for revision at the instance of the prosecution and the issue was whether the errors were so serious as would vitiate the four convictions. The court also had to consider whether the learned trial magistrate had erred in imposing a disqualification of six months.

Held:

(1) The ingredients required to be proved in respect of the four offences were the same whether the charges were framed under the 1987 Act or under the 1958 Ordinance. The errors

were technical and the accused had not in any way been misled. The defects may be cured by the relevant amendments without affecting the validity of the convictions.

(2) The heavier imprisonment terms or fines provided in the 1987 Act in relation to three of the four charges did not adversely affect the accused since the prosecution had indicated that they would not press for heavier sentences. The amendments, therefore, did not in any way prejudice the accused.

(3) Section 90(2) of the 1987 Act laid down a statutory minimum of 12 months' disqualification with power to the sentencing court to impose a longer period. However, if special reasons were shown and the sentencing court considered the case fit, it could order a disqualification period of less than 12 months in which event the special reasons must be stated in the order. To constitute 'special reasons' the circumstances put forward must be directly connected with the commission of the offence, but one that is peculiar to the offender as distinguished from the offence would not suffice.

(4) In his plea of mitigation in the lower court, the accused said that he was unemployed, married with a child and had no money. All these could not, in law, amount to a special reason. The learned trial magistrate had, therefore, erred in imposing a disqualification of six months.

Cases referred to

1 *Lee Chiang Seng & Ors* v *PP* [1967] 2 MLJ 32 (refd)
2 *Siah Ik Kow* v *PP* [1968] 2 MLJ 217 (refd)
3 *PP* v *Lee Hong Kee* [1969] 2 MLJ 60 (refd)
4 *Whittall* v *Kirby* [1946] 2 All ER 552 (folld)
5 *R* v *Wickins* (1958) 42 Cr App R 236 (folld)
6 *Re Kanapathipillai & Ors* [1960] MLJ 243 (folld)

Legislation referred to

Road Traffic Ordinance 1958 ss 22(1), 25(1), (2), 36(1), 74(1), (2), 146(1)(d)
Road Transport Act 1987 ss 23(1), 26(1), (2), 43(1), 90(1), (2)

Ahmad Zaki bin Hj Husin (Senior Federal Counsel) for the Public Prosecutor.

Accused in person.

Cur Adv Vult

Chong Siew Fai J: This case comes up for revision at the instance of the prosecution.

On his own pleas of guilty, the accused was convicted of four offences all under the Road Traffic Ordinance 1958. He was fined and his driving licence endorsed. I do not propose to reproduce the four charges in extenso. Suffice it, for the purpose of this revision, that the following particulars of the four offences are given:

(a) in relation to the first charge: s 25(2) (driving without valid licence) punishable under s 146(1)(d);
(b) in relation to the second charge: s 74(1) (using a motor vehicle without valid third-party insurance) punishable under s 74(2);
(c) in relation to the third charge: s 22(1) (using a motor vehicle without there being in force a valid motor vehicle licence); and
(d) in relation to the fourth charge: s 36(1) (driving without due care and attention).

In addition to the fines, the accused was also disqualified from holding and obtaining a Group D driving licence for six months. The disqualification must have been imposed under s 74(2) of the Ordinance since that, in nature, was a mandatory provision.

All the offences arising out of one and the same transaction were committed on 3 January 1988 by which date the Road Traffic Ordinance 1958 ('the 1958 Ordinance') had already been repealed and the Road Transport Act 1987 ('the 1987 Act') had come into force. The accused therefore should have been charged with the four offences under the 1987 Act, more particularly, as follows:

(a) respecting the first charge, under s 26(1) punishable under s 26(2) of the 1987 Act instead of under s 25(1) punishable under s 146(1)(d) of the 1958 Ordinance;
(b) respecting the second charge, contravening s 90(1) under s 90(2) of the 1987 Act instead of contravening s 74(1) under s 74(2) of the 1958 Ordinance;
(c) respecting the third charge, under s 23(1) of the 1987 Act instead of under s 22(1) of the 1958 Ordinance; and
(d) respecting the fourth charge, under s 43(1) of the 1987 Act instead of under s 36(1) of the 1958 Ordinance.

However, I do not think the errors are so serious as would vitiate the four convictions. The ingredients required to be proved in respect of the four offences are the same whether the charges are framed under the 1987 Act or under the 1958 Ordinance. The errors are technical and the accused had not in any way been misled. In fact the provisions contained in the sections of the two statutes specified above with reference to each of the four charges are almost exactly or substantially the same. No miscarriage of justice had been occasioned. The defects may, in my opinion, be cured by amendments stated below without affecting the validity of the convictions: *Lee Chiang Seng & Ors* v *PP*[1] at p 33, first col D-F, p 35, first col D; *Siah Ik Kow* v *PP*[2] at p 217, second col A-C and *PP* v *Lee Hong Kee*[3] at p 61, first col G.

As regards the penalties (excluding disqualification with which I shall deal in a moment), except for the second charge where they are similar, there are some differences in the other three charges in that the corresponding sections in the 1987 Act provide heavier imprisonment terms or fines. These, however, will not adversely affect the accused since the learned deputy public prosecutor had indicated that the prosecution would not press for heavier sentences. The amendments, therefore, will not in any way prejudice the accused.

The four charges are amended as follows:

(1) in all the four charges, the words 'Road Traffic Ordinance 1958' wherever appearing are deleted and substituted by the words 'Road Transport Act 1987';
(2) in each of the first, second, third and fourth charges, the word 'Ordinance' appearing lastly be deleted, and the word 'Act' substituted therefor;
(3) in the first charge, the figures '25(1)', '25(2)' and '146(1)(d)' be deleted and be substituted by the figures '26(1)', '26(2)' and '26(2)' respectively;
(4) in the second charge, the figures '74(1)' and '74(2)' be deleted and be substituted by the figures '90(1)' and '90(2)' respectively;
(5) in the third charge, delete the figure '22(1)' and substitute therefore '23(1)'; and
(6) in the fourth charge, delete the figure '36(1)' and substitute therefor '43(1)'.

The sentences of fines which I understand from the accused had already been paid and the order of indorsement on his driving licence remain unaltered.

Another matter to deal with is the disqualification from driving. This is in relation to the second offence. As in s 74(2) of the 1958 Ordinance, s 90(2) of the 1987 Act lays down a statutory minimum of 12 months' disqualification with power to the sentencing court to impose a longer period. However, if special reasons are shown and the sentencing court considers the case fit, it may order a disqualification period of less than 12 months in which event the special reasons must be stated in the order. To constitute 'special reasons' the circumstances put forward must be directly connected with the commission of the offence, but one that is peculiar to the offender as distinguished from the offence will not suffice: *Whittall* v *Kirby*;[4] *R* v *Wickins*;[5] *Re Kanapathipillai & Ors.*[6]

In his plea of mitigation in the lower court, the accused said that he was unemployed, married with a child and had no money. He begged for leniency. All these cannot, in law, amount to a special reason. The learned trial magistrate therefore had erred in imposing a disqualification of six months.

In this court, the accused was given an opportunity to state his case. What he said, however, related to his employment and family plight. They, likewise, are not capable, in law, of amounting to special reasons. In the circumstances, I am constrained by law to impose a disqualification period of 12 months. The six-month disqualification ordered by the lower court is set aside and a period of 12 months commencing from 10 March 1988 (date of sentencing in the lower court) substituted.

Order accordingly.

Reported by *Ng Sheau Jiuan*